

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

DUSTIN SIAU

PLAINTIFF

v.

Case No. 6:17-cv-6118

CORPORAL SIMMONS and  
CORPORAL DYER

DEFENDANTS

**ORDER**

Before the Court is the Report and Recommendation filed June 17, 2019, by the Honorable Mark E. Ford, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 29). Judge Ford finds that Plaintiff has failed to demonstrate that he properly exhausted his administrative remedies prior to bringing this action. Thus, Judge Ford recommends that the Court grant Defendants' motion for summary judgment (ECF No. 25) and dismiss this case with prejudice.

Plaintiff has not filed objections to the Report and Recommendation, and the time to object has passed. *See* 28 U.S.C. § 636(b)(1). Therefore, the Court adopts the Report and Recommendation (ECF No. 29) to the extent that it recommends that the Court grant Defendants' summary judgment motion and dismiss this case.

However, the Court will depart from the Report and Recommendation to the extent that it recommends dismissal of this case with prejudice. "[O]nce a trial court determines that a prisoner's claims are unexhausted, it is required to dismiss the case without prejudice—and it cannot proceed to reach the merits and dismiss the case, with prejudice." *Reed v. Anderson*, No. 5:11-cv-0111-DPM/JTR, 2011 WL 4709884, at \*2 (E.D. Ark. Sept. 9, 2011) (citing *Barbee v. Corr. Med. Servs.*, 394 F. App'x. 337, 338 (8th Cir. 2010)). The Court agrees with Judge Ford

that Plaintiff has failed to demonstrate that he properly exhausted his administrative remedies with respect to his claims in this case. Thus, Plaintiff's unexhausted claims must be dismissed without prejudice. *Id.* Accordingly, Defendants' motion for summary judgment (ECF No. 25) is hereby **GRANTED**. Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED**, this 10th day of July, 2019.

/s/ Susan O. Hickey  
Susan O. Hickey  
Chief United States District Judge